

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSE R. MEMBRANO, on behalf of himself  
And other similarly situated,

Plaintiff,

*-against-*

POPS, PRESERVATION OF PROPERTY SERVICES,  
INC., and HARRIS OTERSON,

Defendants.

*FILE: CV 12—2934*  
*Second*  
*Amended Answer*  
Jury demanded  
for counter-claims

-----X  
The Michael Joseph Corcoran, Esq., appearing for the defendants, PRESERVATION OF PROPERTY SERVICES, INC., and HARRIS OTERSON, answering the Complaint of the plaintiff alleges the following upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered: 3, 4, 5, 10, 17, 19 and 32.
2. Denies each and every allegation contained in paragraphs numbered 1, 2, 11, 12, 14, 15, 16, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 33, and 34.
3. Denies the allegations contained in the following paragraphs as the entity identified as POPS does not exist: 6, 7, 9, 13 and 14.
4. Denies the allegations contained in paragraph numbered 8, except to admit that plaintiff had employment relation as exempt employee with the defendant, Preservation of Property Services, Inc.
5. Denies, admits, denies the allegations contained in the following paragraphs as the entity identified as POPS does not exist or denies knowledge or information sufficient to form a belief as to an of the allegations as previously stated in paragraphs numbered 18 and 31.

*As and for a First Affirmative Defense*

6. The defendant PRESERVATION OF PROPERTY SERVICES, Inc. is a properly formed corporation and said corporation at all times hereinafter mentioned has remained in good standing with the secretary of state and as such stockholders are exempt from personal liability, therefore the action *vis-à-vis* the defendant Harris Oterson, a corporate stockholder and employee is void.

*As and for a Second Affirmative Defense*

7. The plaintiff was an exempt employee as defined by New York State of Federal Law and, as such is not subject to hourly restrictions or entitled to additional compensation.

*As and for a third affirmative defense*

8. The complaint fails to state a cause of action as a matter of law.

*As and for a fourth affirmative defense*

9. The plaintiff fails to raise any compensation issues until charged with criminal activity by the Suffolk County District Attorney related to property wrongfully taken by the plaintiff from the defendant PRESERVATION OF PROPERTY SERVICES, INC.

*As and for a fifth affirmative defense*

10. Plaintiff's assertion of representation of 'others similarly situated' is subject to defense of 29 USC§255, statute of limitations, and other statutes, and is time barred for those persons, as yet unnamed, 'similarly situated' beyond the appropriate time period.

*As and for a first counterclaim on behalf of the defendant Preservation of Property Services, Inc.*

11. During the employment relationship between plaintiff and defendant Preservation of

Property Services, Inc., the plaintiff, JOSE R. MEMBRANO, had access to property and equipment owed by the defendant PRESERVATION OF PROPERTY SERVICES, INC. and used his authority as an administrator to wrongfully and without consent or permission deprive the defendant of property and equipment owed and used by the defendant in the course of its business and as such cost the defendant expenses and charges to secure replacement property and equipment, the exact determination of expenses to be determined upon further discovery.

*As and for a second counterclaim on behalf of the defendant Preservation of Property Services, Inc.*

12. Due to the conversion of the defendant PRESERVATION OF PROPERTY SERVICES, INC.'s property and equipment by the plaintiff JOSE R. MEMBRANO, the defendant had to retain counsel to seek the return of the property and equipment during the pendency of the criminal action against the plaintiff currently pending in the District Court, County of Suffolk.

*As and for a third counterclaim on behalf of the defendant Preservation of Property Services, Inc.*

13. Due to the wholly unjustified conversion of the property and equipment and abuse of the authority given to plaintiff, JOSE R. MEMBRANO, and refusal to immediately return to its rightful owner, PRESERVATION OF PROPERTY SERVICES, INC., defendant PRESERVATION OF PROPERTY SERVICES, INC., hereby seeks punitive damages from the plaintiff, JOSE R. MEMBRANO, at an amount to be set upon further discovery.

14. Defendants request a jury on all those matters asserted in the counterclaims.

**WHEREFORE**, the defendants PRESERVATION OF PROPERTY OF SERVICES, INC., and HARRIS OTERSON requests the complaint of the plaintiff be dismissed in its entirety, and defendant be awarded damages for the unlawful conversion of its property, legal costs related to the

property's reacquisition and punitive damages related to the conversion of the property and equipment together with interest, costs and disbursements related to the defense of this action, together with such other relief to this court seems just and proper.

Islandia, New York  
July 25, 2012

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Michael Joseph Corcoran, Esq. [MC7533]  
Attorney for the Defendants PRESERVATION OF  
PROPERTY SERVICES, INC and HARRIS  
OTERSON  
100 Patco Court  
Islandia, New York 11749  
631-451-8220

*Verification of Answer*

State of New York        )

ss.:

County of Suffolk        )

Colleen Oterson, president of the defendant PRESERVATION OF PROPERTY SERVICES, INC being duly sworn, deposes and says:

That the deponent is an officer of the corporation, PRESERVATION OF PROPERTY SERVICES, INC. one of the defendants in the within action; that deponent has read the foregoing Amended Answer and know the contents thereof; that the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleges on information and belief, and to those matters, deponent believes them to be true.

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Colleen Oterson, president of PRESERVATION  
OF PROPERTY SERVICES, INC.

Sworn to me this 25<sup>th</sup> day of July , 2012

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Notary Public

*Verification of Answer*

State of New York        )

ss.:

County of Suffolk        )

Harris Oterson, being duly sworn, deposes and says:

That the deponent is a named defendant in the within action; that deponent has read the foregoing Answer and know the contents thereof; that the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleges on information and belief, and to those matters, deponent believes them to be true.

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Harris Oterson

Sworn to me this 11<sup>th</sup> day of July , 2012

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Notary Public

*Affidavit of Service*

State of New York     )

ss.:

County of Suffolk     )

Michael J. Corcoran, Esq., being duly sworn, says:

I am not a party to the action, am over the age of 18 and reside in great River, New York. On July 25, 2012, I served a true copy of the *Defendant's Amended Answer* by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known addresses of the addressees as indicated below:

J. Ceasar Galarza  
5020 Sunrise Highway, 2<sup>nd</sup> Floor  
Massapequa Park, New York 11762

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Michael J. Corcoran, Esq.

Sworn to me the  
25<sup>th</sup> day of July, 2012

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Notary public